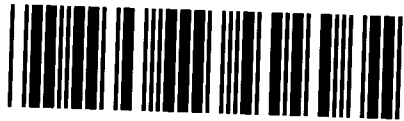


Control Number: 40152



Item Number: 5

Addendum StartPage: 0

DOCKET NO. 40152

**AGREED NOTICE OF VIOLATION
AND SETTLEMENT AGREEMENT
RELATING TO ENERNOC'S
VIOLATION OF PURA § 39.151 AND
P.U.C. SUBST. R. 25.503(f)(2),
RELATING TO FAILURE TO ADHERE
TO ERCOT PROTOCOL
§§ 8.1.3.1(6)(a) AND 8.1.3.1(6)(f)
RELATING TO EMERGENCY
INTERRUPTIBLE LOAD SERVICE
PERFORMANCE**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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PUBLIC UTILITY COMMISSION
FILING CLERK

ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and EnerNOC, Inc. (EnerNOC) (together, Parties) regarding Commission Staff's investigation of EnerNOC for violations of PURA¹ § 39.151 and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas, Inc. (ERCOT) Protocol §§ 8.1.3.1(6)(a) and 8.1.3.1(6)(f), relating to Performance Criteria for Emergency Interruptible Load Service (EILS) Qualified Scheduling Entities (QSEs) obligations. Commission Staff recommended an administrative penalty of \$45,000, which EnerNOC has agreed to pay. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. EnerNOC is a QSE, as defined by ERCOT Protocol § 2.1.
2. EnerNOC was under contract with ERCOT to provide EILS on February 2 and 3, 2011.
3. ERCOT Protocols consider a QSE's portfolio of EILS loads that achieve an event performance factor of 95% or better to have met its performance obligations. ERCOT

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2011) (PURA).

5

Protocols also require a QSE's portfolio to curtail its load within 10 minutes of ERCOT's request.

4. At 5:43 a.m. on February 2, 2011, ERCOT declared an Energy Emergency Alert Level 3 (EEA3) and ordered the dispatch of Non-Business Hours (NBH) EILS. This and subsequent dispatches continued for a total event length of approximately 28 hours.
5. EnerNOC violated ERCOT Protocol § 8.1.3.1(6)(a) during the February 2 and 3, 2011, EEA3 event by failing to deploy NBH EILS within 10 minutes of ERCOT's request. EnerNOC did not fully meet its load reduction obligation until the interval ending at 9:15 a.m.
6. EnerNOC also violated ERCOT Protocol § 8.1.3.1(6)(f) during the February 2 and 3, 2011, EEA3 event by failing to meet its required EILS Event Performance Factor of 95% or greater. EnerNOC's portfolio EILS Event Performance Factor was 90%.
7. On or about September 16, 2011, EnerNOC was provided proper notice of Commission Staff's investigation of this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
8. EnerNOC fully cooperated with Commission Staff's investigation. EnerNOC approached Commission Staff in April 2011, prior to notification of an official investigation by Commission Staff, with information regarding the violations and the corrective action plan EnerNOC had already undertaken to prevent the operator error issue that caused the violations from occurring again.
9. EnerNOC acknowledges the violations detailed in this Order.
10. EnerNOC participated in one or more settlement discussions with Commission Staff to resolve this matter.
11. On February 2, 2012, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and EnerNOC agreed to pay, an administrative penalty of \$45,000.
12. The Agreement provides for a reasonable resolution of this dispute and should be approved.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.051, 15.023, 15.024, and 39.151(d) and (j).
2. EnerNOC was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
3. ERCOT Protocol § 8.1.3.1(6)(a) requires a QSE's portfolio of EILS loads to curtail within 10 minutes of ERCOT's request.
4. ERCOT Protocol § 8.1.3.1(6)(f) requires a QSE's portfolio of EILS loads to achieve an event performance factor of 95% or better to have met its performance obligations.
5. EnerNOC violated PURA § 39.151(d) and (j), and the requirements of P.U.C. SUBST. R. 25.503(f)(2) during the February 2 and 3, 2011, EEA3 event. EnerNOC's portfolio failed to meet the performance criteria of ERCOT Protocol §§ 8.1.3.1(6)(a) and 8.1.3.1(6)(f), relating to Performance Criteria for EILS QSE's obligations.
6. ERCOT Protocol § 8.1.3.3.1(1) relating to Performance Criteria for EILS QSE provides that it is a violation of ERCOT Protocols for a QSEs portfolio to fail the performance criteria established in ERCOT Protocol § 8.1.3.1.
7. P.U.C. PROC. R. 22.246(g)(1)(A)(B) and (C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.
8. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
9. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement, provided with this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. EnerNOC shall pay an administrative penalty to the Commission in an amount totaling \$45,000 no later than 30 calendar days after the date of this Order. Payment shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 40152. The check shall be sent to the following address:

Public Utility Commission of Texas
P.O. Box 13326
1701 N. Congress Avenue
Austin, Texas 78711
ATTN: Fiscal Services

3. EnerNOC shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
5. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not be regarded as binding holding or precedent as to the appropriateness of any principle underlying the Agreement.

6. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 27th day of February 2012.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER

PUC DOCKET NO. 40152

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO ENERNOC'S §
VIOLATION OF PURA § 39.151 (d) §
AND P.U.C. SUBST. R. 25.503(f)(2); §
RELATING TO FAILURE TO ADHERE §
TO ERCOT PROTOCOL §
§§ 8.1.3.1(6)(a) AND 8.1.3.1(6)(f) §
RELATING TO EMERGENCY §
INTERRUPTIBLE LOAD SERVICE §
PERFORMANCE §

BEFORE THE PUBLIC UTILITY

COMMISSION OF TEXAS

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Staff) and EnerNOC, Inc. (EnerNOC or Company), (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of EnerNOC for violation of Section 39.151(d) of the Public Utility Regulatory Act² (PURA) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocol §§ 8.1.3.1(6)(a) and 8.1.3.1 (6)(f), relating to Performance Criteria for Emergency Interruptible Load Service (EILS) Qualified Scheduling Entities (QSEs) obligations, on February 2-3, 2011.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommends and EnerNOC agrees to pay an administrative penalty of Forty Five Thousand dollars (\$45,000.00) for EnerNOC's violations described in the attached Proposed Order.

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

3. Unless specifically provided for in this Agreement, EnerNOC waives any notice and procedures that might otherwise be authorized or required in this proceeding.
4. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules for violations that are not raised in this Commission Staff investigation. This settlement disposes of all issues related to EnerNOC's performance on February 2-3, 2011 under PURA, the Commission's Substantive Rules and the ERCOT Protocols in effect on those days.
5. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement, whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.
6. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.
7. This Agreement represents the effort by EnerNOC and Staff to avoid the future expenditure of significant resources in litigating this matter.

8. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.
9. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.
10. EnerNOC warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

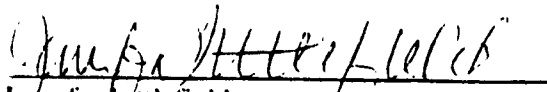
EXECUTED by the Parties through their authorized representatives designated below



David Brewster
President
(617) 224-9900
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110

Date: 2/1/12

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(512) 867-6766 (facsimile)
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1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Date: 2/1/12